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ALEXANDER L. STEVAS
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No. 82-730

IN THE SUPREME COURT

of the

UNITED STATES

October Term, 1982,

ALEXANDER F. EAGLE,

Petitioner,

vs.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Respondent,

and

AMERICAN TELEPHONE & TELEGRAPH COMPANY, a corporation,

Real Party in Interest.

# PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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With increasing frequency the Chief Justice of the United States expresses concern for the ability of the Federal system to handle its excessive caseload. In the face of that concern, increasing the caseload by retention of a case over which there is no original jurisdiction, by reason of a simplistic and mechanical application of an erroneous interpretation of ex parte Harding (1911) 219 U.S. 363, must be prevented. Harding does not mean that mandamus is beyond the power of the Circuit Court of Appeals. That Court has authority to issue mandamus to compel an inferior court to relinquish jurisdiction of a removed case which is not within its lawful original jurisdiction. Using mandamus for that purpose would accomplish to some degree the relief which the Chief Justice continually argues is necessary.

## I. MANDAMUS IS AVAILABLE TO A CIRCUIT COURT WHEN JURISDICTION IS IMPROPERLY ASSUMED BY A DISTRICT COURT.

Harding holds that mandamus may be issued in special circumstances, viz., where an inferior court lacks jurisdiction. Harding recognized such circumstances had been and continued to be a proper basis for mandamus in Virginia v. Rives (1880) 100 U.S. 313 and the line of cases following it, in which mandamus had been issued to prevent the improper assertion of jurisdiction. The essential meaning of Harding is that mandamus can be used to control the usurpation of jurisdiction, but cannot be used to control discretion of a lower court.

That distinction was preserved in Roche v. Evaporated Milk Association (1943) 319 U.S. 21. The quotation in the opposition brief is out of context. The Harding exceptions are still the law. Roche

approved the use of mandamus in at least two special circumstances (page 32). One of these situations squarely fits this case:

> "It [mandamus] was issued in aid of the appellate jurisdiction of this Court to compel an inferior court to relinquish a jurisdiction which it could not lawfully exercise . . . "

This is such a case, but the Circuit Court has denied its own power to act.

## II. THE DISTRICT COURT DISREGARDED SYNDER v. HARRIS TO USURP JURISDICTION.

The amounts in controversy for individual members of a class cannot be aggregated to satisfy the requirement of 28 U.S.C. §1332(a). Snyder v. Harris (1969) 394 U.S. 332.

Plaintiff's claim for less than $10,000 arises under California law, which is that each minority shareholder has an

action against a wrongdoing majority shareholder for breach of fiduciary duties. Jones v. H. F. Ahmanson & Co. (1969) 1 C.3d 93. How the damages may ultimately be measured does not determine the jural nature and the individuality of the cause of action.

CONCLUSION.

The District Court had no original jurisdiction of this case. It was improvidently removed. The need for preservation of the limitation on Federal jurisdiction in this situation presents the special circumstances for exercise of the power of mandamus which the Ninth Circuit Court of appeals has erroneously ruled it does not have. Therefore, the petition for certiorari should be issued.

Dated: November 19, 1982.

Respectfully submitted,

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CERTIFICATE OF SERVICE

SAMUEL L. HOLMES certifies as follows:

On November 19, 1982, PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI in the above-entitled case was mailed to the parties required to be served in envelopes deposited to the

United States mail, with first-class postage prepaid, addressed as follows:

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_____
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